

PARK CITY CHIEF MINING CO.

IBLA 81-193

Decided September 3, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. U MC 173878 and U MC 173879.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Recordation

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

APPEARANCES: Robert C. Cummings, Esq., Salt Lake City, Utah, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Park City Chief Mining Company has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 14, 1980, declaring the Victory Lode Nos. 1 and 2 mining claims abandoned and void for failure to furnish dates of location in response to a "Notice of Deficiency/Discrepancy," dated June 16, 1980.

On October 22, 1979, appellant filed copies of notices of location for the subject mining claims. The dates of location, however, were omitted from the copies. In its deficiency notice, referring to "Victory Lode #1, 2," BLM stated that "[a]ll claims must show date of location." The notice provided 30 days to cure the defect and that failure to do so would "result in the claim(s) being considered abandoned."

In its statement of reasons for appeal, appellant contends that the dates of location may already have been furnished to BLM and that, even if they weren't, this is merely a "clerical matter" which renders the filing "defective" within the meaning of section 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (c) (1976). Appellant also argues that the notice of deficiency was inadequate in that it did not specifically inform appellant that it had failed to furnish the dates of location. Finally, appellant argues that Richard S. Johnson, "lone survivor of the early officers of Park City Chief," and the person who made the recordation filings, has been incapacitated since June 1980 as the result of a stroke and has been unable to carry on appellant's business.

On November 5, 1980, after learning that the requested information had not been furnished, appellant's attorney filed section maps indicating the date of location for the Victory Lode Nos. 1 and 2 mining claims as June 8, 1942. See letter from Robert C. Cummings, Esq., to Robert Lopez, Chief, Branch of Records and Data Management, BLM, dated November 4, 1980.

[1] Section 314(b) of FLPMA, supra, provides that the owner of an unpatented mining claim whether located before or after October 21, 1976, shall file a copy of the notice or certificate of location with BLM within certain time periods. See 43 CFR 3833.1-2(a) and (b). Furthermore, the regulations implementing section 314(b) of FLPMA, supra, require in pertinent part that the copy of the notice or certificate of location "shall be supplemented by the following additional information unless it is included in the copy: * * * (4) The date of location * * *." 43 CFR 3833.1-2(c)(4).

Failure to furnish a date of location in a supplemental filing pursuant to 43 CFR 3833.1-2(c) is treated as a "curable defect" by BLM, in accordance with Organic Act Directive (OAD) No. 80-5 (Oct. 31, 1979). OAD No. 80-5 provides that:

The claimant will be issued a decision specifically listing the information required, and giving him at least 30 days in which to cure the defects. Upon reasonable showing an extension of time should be allowed. If the called for information is not submitted, the filing will be rejected by an appealable decision. [Emphasis added.]

The requirement of submitting a date of location is not merely a technical requirement. It is necessary in order for BLM to determine whether a recordation filing has been timely made. Review of the record, however, indicates that purpose was not frustrated in this case. One of the documents filed with BLM on October 22, 1979, was "Mineral Survey No. 7283," prepared by the office cadastral engineer, BLM, and dated December 1, 1957. It refers to the "Claim of New Park Mining Company known as the Victory No. 1 and Victory Lode No. 2 Lodes." The mineral survey clearly establishes that the claims in question were located prior to December 1, 1957. Accordingly, BLM could properly have assumed that the claims were located "prior to October 21, 1976" and that the recordation filings were timely made. 43 U.S.C. § 1744(b) (1976); see also 43 CFR 3833.1-2(a).

This is not to say that BLM, under such circumstances, may not require that a mining claimant furnish the date of location of the claim, pursuant to 43 CFR 3833.1-2(c), or that the claimant need not respond to such a request. Clearly, BLM acted properly in requiring the date of location. Furthermore, we believe that the notice of deficiency was adequate to inform appellant that it had failed to furnish the dates of location. The title of the notice itself indicated that it referred to deficiencies in the recordation filings. Moreover, the notice listed various recordation requirements, the deficiency of which could be indicated by checking a box. The box marked "Other" was checked and a sentence was inserted, "All claims must show date of location and county recordation (date, serial number, book and page)." The notice clearly was more than a restatement of the filing requirements applicable to all unpatented mining claims.

There is no evidence that appellant responded within 30 days of receipt of the notice of deficiency. Nevertheless, we believe that this failure to respond timely should not result in the rejection of the filing where the person entrusted with handling such matters was incapacitated and was not reasonably able to attend to normal business matters. Cf. David Kirkland, 19 IBLA 305 (1975); Ada E. Lundgren, 17 IBLA 132 (1974). While allegations of the disability of Richard S. Johnson would not excuse a late filing, E. M. Koppen, 36 IBLA 379 (1978), this case does not present a question of a late filing but, rather, a question of a curable deficiency. In the latter regard, we believe that Johnson's disability was sufficient to excuse the failure to respond timely, especially, when appellant promptly cured the defect upon learning that Johnson had not.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision

appealed from is set aside and the case remanded to BLM for further action not inconsistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

